



May 18, 2000

Ms. Heather Silver  
Assistant City Attorney  
Office of City Attorney  
City Hall  
City of Dallas  
Dallas, Texas 75201

OR2000-1975

Dear Ms. Silver:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 135958.

The City of Dallas (the “city”) received a request for information relating to Love Field Airport. You state that a portion of the requested information will be provided to the requestor. You have submitted a representative sample of the responsive documents you seek to withhold which you refer to as exhibits B, C, and D.<sup>1</sup> You argue that the responsive information, as represented by these three exhibits, is excepted from public disclosure pursuant to sections 552.103, 552.105, 552.107, and 552.111 of the Government Code. We have reviewed the exceptions you claim and the information submitted.

The requestor seeks documents relating to nine itemized categories of information. You explain that exhibits B, C, and D are representative samples of information responsive to the request as listed in items 1 and 2. Specifically, the requestor asks for the following information:

1. Legal opinions regarding the effect of the DFW Bond covenants on operations at Love Field Airport.

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

2. Legal opinions regarding the effect of DFW Bond covenants on American Airlines (“American”) request to open gates in the East Terminal and waive the restrictions in its lease.

You explain that the information contained in exhibits B, C, and D consists of legal opinions prepared by various city attorneys or outside legal counsel working on behalf of the city attorney’s office. You argue the information is exempt from disclosure under section 552.103 of the Government Code.

Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state is or may be a party. A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). To support your contention that litigation is pending or reasonably anticipated, you have submitted exhibits E, F, and G which consist of documents relating to three legal actions in various stages of litigation. You argue that the requested legal opinions contained in exhibits B, C, and D are related to these causes. You state the following:

The requested legal opinions in Exhibits B, C, and D concern the subject matter of the litigation, which is the scope of the covenants in the 1968 Regional Airport concurrent Bond Ordinance. A key issue in the litigation is the extent to which the Section 9.5 bond covenants can legally required [sic] the City to restrict air passenger service to and from Love Field Airport.

After reviewing the submitted information, we conclude that litigation is pending and the information in exhibits B, C, and D is related to that litigation. You have fulfilled your burden of showing that section 552.103(a) is applicable. Thus, you may withhold the information pursuant to section 552.103(a).

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information and such information must be disclosed. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Because section 552.103 is dispositive, we do not address your other arguments against public disclosure.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Julie Reagan Watson". The signature is fluid and cursive, with the first name "Julie" being the most prominent.

Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/nc

Ref: ID# 135958

Encl. Submitted documents

cc: Mr. Steven DeWolf  
Bellinger & DeWolf  
750 North St. Paul Street, Suite 900  
Dallas, Texas 75201  
(w/o enclosures)